The impact of nationalising the private shareholding of the South African Reserve Bank

By

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Abstract

This paper investigates, as its main question, the probable impact of nationalising the private shareholding of the South African Reserve Bank (SARB). A sub-question is first posed in order to answer the main question. The sub-question is: are the shareholders of the SARB the owners of the Bank and what are their rights and obligations? In a nationalisation scenario the rights and obligations of the shareholders will cease to exist. Therefore, it is essential first to determine all the rights and obligations of the shareholders when measuring the impact of nationalising the SARB private shareholding. The paper uses the A.M. Honoré legal test of ownership to determine whether the shareholders of a South African listed company and the SARB shareholders, can be viewed as the owners of the respective entities. That legal test indicated that the shareholders of a JSE- listed corporation satisfy very few of the legal incidents of ownership and the SARB shareholders satisfied none. Consequently, from a legal point of view, shareholders of the SARB are not its owners.

By analysing, critically, the historic data concerning share price growth and share liquidity for the SARB, and what the possible expropriation compensation might be, this paper seeks to determine if profit is a

motive for owning SARB shares. Profit was not found to be a motive for owning those shares. The motive of shareholders in owning SARB shares can potentially reveal undisclosed shareholder rights and obligations.

The AGM of the SARB is also observed to determine if any undisclosed shareholder rights and obligations exist. No unusual rights and obligations were determined except a close relationship between the commercial bank shareholders and the SARB. The SARB shareholder rights and obligations are in accordance with the South African Reserve Bank Act and Regulations.

After the sub-question is answered and a complete set of shareholder rights and obligations are determined, the operational, financial and corporate governance effect of nationalising the South African Reserve Bank is discussed. If it is assumed that the directors and Monetary Policy Committee (MPC) can continue with the same degree of autonomy, then nationalising the private shareholding of the SARB will have no significant financial, operational and corporate governance effect on the Bank. This paper suggests that the true motive for requesting the nationalisation of the SARB private shareholding, is the desire to nationalise the ability of commercial banks to create the nation's money supply.

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List of Abbreviations

Abbreviation	Meaning
ANC	African National Congress
EFF	Economic Freedom Fighters
SARB	South African Reserve Bank
SARB Act	South African Reserve Bank Amendment Act No.4 of 2010
SARB Regulations	South African Reserve Bank Regulations, 2010

1. Introduction

In recent years there have been requests from various activists to nationalise the private shareholding of the South African Reserve Bank (SARB). The term 'private shareholding' is defined as a shareholding in a central bank by any party other than the respective government where the central bank is located (Rossouw, 2016:150). The SARB had 775 private shareholders at 30th November 2017 (SARB, 2017a). According to the SARB website the bank is ultimately accountable to Parliament (SARB, 2017b) and therefore not to the shareholders.

At the 2017 ANC National Policy Conference (African National Congress, 2018a:36) and ANC National Executive Committee meeting held on 13 January 2018, motions were tabled to nationalise the private shareholding of the SARB (African National Congress, 2018b). More recently, Parliament published a notice inviting the public to comment on a draft bill which was proposed by the Economic Freedom Fighters (EFF). The draft bill ensures that state will be the sole shareholder of the SARB (Maqhina, 2018). The effect of nationalising the private shareholding of the SARB has not been formally researched, but it is important to determine the impact of nationalisation on the SARB and the SA Government. The impact will be discussed in terms of three separate effects: the financial impact, operational impact and the corporate governance impact on the SARB.

The literature review in section 2 will start by evaluating literature about the ownership structure of the SARB and how it compares to other central banks. That literature will show clearly that the ownership structures of central banks vary significantly (Rossouw, 2016:153) and no central bank exists with its legal system identical to the SARB. This finding poses a problem as there is no specific literature on the nationalisation of similar central banks which will provide a basis to answer our main question. Consequently, this thesis uses a flanking approach to the main question by first posing then answering a sub-question which will provide a basis to answer the main question.

The sub-question is as follows: are the SARB shareholders the owners of the SARB and what are their current rights and obligations? The underlying notion in the activists' requests for nationalising the SARB is that the shareholders own it and they benefit financially from the Bank. In a nationalisation scenario, the shareholders (who are the owners in the activists' view) and their rights and obligations will be transferred to the SA Government. It is therefore an essential step in the process of determining the effect of the transfer from shareholders to the SA Government (main question), first to determine if the shareholders are indeed the owners and what their exact rights and obligations are (sub-question).

In order to answer the sub-question, the literature review in section 2 will evaluate literature showing that shareholders are the owners of their corporations, such as the SARB. The literature review will also seek evidence to the contrary; in other words, that shareholders (including SARB shareholders) are not the owners of the corporations in which they own shares. Agency theory contributed a great deal towards the perception that shareholders own corporations, hence the literature review includes agency theory and stakeholder theory literature. Furthermore, section 2 will evaluate literature to find a legal measure for corporate ownership. An ownership measure must be used to answer the sub-question which, to re-iterate is as follows: are the SARB shareholders the owners of the SARB (the corporation) in which they own shares? The legal measure used in this study is A.M. Honoré's 11 incidents (or characteristics) of ownership. This legal measure is first used in section 3 to determine if the shareholders of a JSE-listed corporation can be viewed as the owners of the corporation on a legal basis. In section 4 the same legal measure is used to determine if the SARB shareholders are the owners of the SARB. Why do we first measure a JSE-listed corporation with the legal measure before looking at the SARB? The reason is that a listed corporation is widely believed to be owned by the shareholders (agency theory) or at least the shareholders are one of the more prominent stakeholders which the company need to satisfy (stakeholder theory). In contrast, the SARB's main objective is to protect the value of the currency and the directors have no obligation toward the shareholders (*The Constitution of the Republic of South Africa, No. 108 of 1996, as amended,* 2012:s224). Therefore, it is reasonable to expect that if the shareholders of a JSE-listed corporation satisfy a given number of the legal incidents of ownership (the measurement), then the SARB shareholders will satisfy fewer of those legal incidents. The legal measurement in sections 3 and 4 showed that the shareholders of a JSE-listed corporation actually satisfy very few of the legal incidents of ownership while the SARB shareholders satisfied none. Consequently, the SARB shareholders are not the owners of the SARB on a legal basis, and the first part of the sub-question is answered.

The Honoré legal measurement of ownership, used in section 4, uncovered the obvious rights and obligations of the SARB shareholders. This thesis then continues, in section 5, to determine if any undisclosed rights and obligations exists. When answering the latter half of the sub-question about what the SARB shareholders' current rights and obligations are, it is important to determine a complete list of those rights and obligations, both disclosed and undisclosed. Only after a complete list of the SARB shareholder rights and obligations has been determined, can the main question about the impact of nationalising the private shareholding be answered.

Section 5 seeks to determine undisclosed SARB shareholder rights and obligations by establishing the motives of shareholders in owning SARB shares. Those motives can disclose rights and obligations that are not obvious from legislation, and these could have an impact when nationalised. Section 5 initially

reviews the possibility that profit is a motive to invest in SARB shares; the review includes an analysis of the potential capital gain, the fixed dividend income and the potential liquidation/nationalisation distribution that shareholders might hope to receive. It is concluded that profit is probably not a motive for investing in SARB shares and this finding concurs with previous literature.

The possible existence of other motives was also investigated by observing the annual general meeting and discussing with shareholders their motives for buying the shares. The only significant single undisclosed right and obligation that was revealed arose from the address of a shareholder at the AGM; here the shareholder was Firstrand Bank Ltd represented by the CEO speaking on the bank's behalf. This is unusual as another individual shareholder (not a commercial bank) who wished to place special business on the agenda for discussion could not do so. The SARB Board concluded that the shareholder's items did not qualify as special business in accordance with the SARB Act and Regulations, even though the SARB Act and Regulations specify no requirements for special business. The individual shareholder was not afforded the right to address the AGM and his rights was strictly limited to those stipulated in the SARB Act and Regulations. The Firstrand Bank Ltd CEO addressed the AGM after the formal agenda was concluded and the commercial bank's rights was not limited to the SARB Act and SARB Regulations. The inconsistent treatment of the two shareholders indicates a working relationship between commercial banks and the SARB.

The sub-question is answered by concluding that the SARB shareholders are not the legal owners of the SARB, in the light of a review of a complete list of their rights and obligations. Section 6 then discusses the impact of nationalising their shareholding. The discussion is divided into three categories: the financial, operational, and corporate governance impacts. It is argued that these three impacts will be insignificant. An important assumption made when determining the impact of nationalisation; thus it is assumed that there will be no alternation in the current measure of SARB autonomy or the SARB mandate. Section 6 continues by discussing the most probable reason why activists request the nationalisation of the SARB private shareholding, since there will be no significant changes arising from nationalisation. The most probable reason is that the activists actually want the nationalisation of the commercial banks' ability to create the nation's money supply. The calls to nationalise the SARB usually coincide with requests to nationalise commercial banks or to open a state bank, which would have the same ability as commercial banks to create money. The idea of the government and not the commercial banks creating the nation's money supply might seem unrealistic and even though the idea is not new, it has gained more popularity in recent years. Recent research shows that there is a case to be made for central banks and not commercial banks to create the nation's money supply and determine its allocation.

2. Literature review

This literature review evaluates literature pertaining to the SARB shareholding and its unique ownership structure. It also addresses the question of whether use can be made of case study literature on previous central bank nationalisations in other countries. The literature review continues by evaluating literature which argues that shareholders are the owners of corporations, as well as literature arguing to the contrary. Agency theory contributed a great deal towards the perception that shareholders own corporations, and so the literature review makes reference to literature on agency theory and stakeholder theory. Finally, an evaluation is made of literature on determining a legal measure for corporate ownership. This legal measurement will be applied to the shareholders of a JSE corporation (section 3) and the SARB shareholders (section 4), in order to answer the first part of the sub-question about whether the SARB shareholders are the owners of the SARB.

2.1 SARB shareholding and the unique nationalisation

Historically, before 1935 it was the exception for central banks to be state owned (Rossouw, 2016:151). Since 1935 many central banks have moved away from allowing private shareholdings, towards exclusive government shareholding (Rossouw, 2016:151). Central banks throughout the world differ in their ownership structures and have been divided into 7 groups, as follows, by previous authors (De Kock, 1939:298; Rossouw, 2016:151):

1) All shares held by the government.

2) All shares held by private shareholders (juristic persons and the general public).

3) All shares held by banks.

4) Shares held by the government and private shareholders.

5) Shares held by the government and banks.

6) Shares held by the government, banks and private shareholders.

7) All shares held by banks and private shareholders.

At present, only a few central banks fall in categories 2 to 7 by allowing shares to be held by parties other than the government; these are Belgium, Greece, Italy, Japan, South Africa, Switzerland, Turkey and the 12 Federal Reserve Banks of the United States (Rossouw, 2016:150). Of these, the only two countries with central banks allowing exclusive private shareholding, where the shareholders are the general public and banks, are Greece and South Africa (Rossouw, 2016:154). Italy and the 12 Federal

Reserve Banks also have exclusive private shareholding (no government shareholding), but their shares are all held by banks (Rossouw, 2016:154).

There are various reasons why central banks have moved away, since 1935, from allowing private shareholding (categories 2-7), to exclusive government shareholding (category 1); nevertheless those reasons differ from country to country (Rossouw, 2016:151). For example, the New Zealand central bank was nationalised as the state wanted to obtain control of certain economic functions (Rossouw, 2016:151). De Kock concludes that many central banks were nationalised after the stress of the 1930 great depression in order to provide financial facilities for the governments (De Kock, 1939:325; Rossouw, 2016:151). The ANC is quite accurate when it says it is a "historical anomaly" that there are private shareholders of the Reserve Bank (African National Congress, 2018a:32), because it is the exception when compared to the global shareholding of other central banks.

Even though many central banks have been nationalised since 1935, it is not possible to determine the impact of nationalising the private shareholding of the SARB, because central banks differ significantly. According to Rossouw the reasons for these differences are mainly the following (2016:153):

1. The conditions of private shareholding differ. For example, there are a limited number of possible ownership combinations each country legally requires (different ownership categories 2 to 7). Alternatively, certain conditions are placed on the juristic entity of the shareholder (individual or business enterprise).
2. The eligibility for shareholding differs; thus, in some countries only private shareholders or businesses domiciled in the country may own shares.
3. The powers of shareholders differ; for example, the voting rights (if any) of the shares and the pre-conditions to exercise voting rights differ.

Furthermore, legal systems differ from country to country, in terms of rules that protect the ownership of property; in this case the SARB shareholding (Hodgson & Honoré, 2013:228). Consequently this thesis will not seek to determine the impact of nationalising the private shareholding of the SARB by reviewing historic nationalisations, because the circumstances of each central bank are unique. To illustrate this point, the Austrian National Bank which was the most recent central bank to be nationalised, is a good example. The Austrian National Bank was nationalised in 2010, but none of the bank's shares were held by the general public and they were all held by commercial Austrian Banks (Rossouw, 2016:152). The SARB shares are held by commercial banks as well as the general public and this situation cannot be compared to the Austrian National Bank situation. An analysis conducted by

Rossouw indicated that private shareholding in centrals banks has different meanings in different countries and considerable differences exist between their various dividend policies (2016:157).

The main question posed in this thesis asks what the impact is of nationalising the private shareholding of the SARB might be. This thesis will first review the SARB shareholders as the owners based on legal principles. Their precise rights and obligations are then examined in order to determine the impact of nationalisation. In a nationalisation scenario the private shareholding of the SARB, including shareholders' rights and obligations, will cease to exist; therefore it is important to research the main and sub-question. No literature could be found on the effect of nationalising the private shareholding of the SARB from a legal perspective.

Historic nationalisations cannot be reviewed in order to provide insights into determining the impact of nationalising the SARB. Therefore, the literature review will proceed by evaluating literature which argues that shareholders, including SARB shareholders, are the owners of corporations (in this case the SARB); literature that argues the opposite will also be reviewed. The final portion of this literature review will evaluate literature to determine a legal measurement for corporate ownership.

2.2 Shareholder ownership versus stakeholder ownership

At the 54th National ANC conference it was noted: (African National Congress, 2018a:32):

> "It is, however, an historical anomaly that there are private shareholders of the Reserve Bank. Conference recommends that the Reserve Bank should be 100% owned by the state. Government must develop a proposal to ensure full public ownership in a manner that does not benefit private shareholder speculators."

The words "[…] the Reserve Bank should be 100% owned by the state [...]" imply that the SARB shareholders own the SARB. Neoliberal economics and agency theory contributed much to the notion that shareholders are the owners of corporations, the greatest such contribution being an essay written by Milton Friedman in 1970, "The Social Responsibility of Business is to Increase its Profits." Friedman noted that the directors are employees of the owners of the corporation (the shareholders) and have a direct responsibility to them (Friedman, 1970:173). It is important to note that the corporations to which authors of agency and stakeholder literature refer to are public corporations where the shareholders and the directors are different people or entities.

An agency relationship is described by Jensen and Meckling as a contract under which the principals (shareholders) engage with agents (management) to perform some service on their behalf by delegated authority (1976:308). Fama and Jensen argued that the problem with an agency relationship is the separation between the residual risk bearers of the company and those who have

the authority to make decisions (1983:301). Residual risk bearers are those who accept the risk of the difference in irregular inflows of resources and promised pay-outs to agents (Fama & Jensen, 1983:307). The difference between irregular inflows and promised pay-outs results in net cash flows, which can be positive or negative, and are due to these residual risk bearers, also referred to as residual claimants (Fama & Jensen, 1983:302). In the case of a modern capitalist firm, agency theory views the residual claimants as the shareholders. Blair and Stout state that the assumption by agency theory that the directors are the shareholders' agents is "one of its greatest weaknesses" and it has exerted enormous influence on theoretical literature (Blair & Stout, 1999:290).

Mikami (2011:XIX) notes that in a capitalist firm those who "finance the firm" also "own and control it." The providers of capital (i.e. shareholders) have the right to control the firm and the right to receive the firm's residual earnings; therefore, they are regarded as the firm's owners (Mikami, 2011:1). Dow and Putterman agreed that shareholders control the firm and stated that in market economies ,"most production occurs in firms where capital suppliers, rather than labour suppliers, wield control" (2000:333).

The economic and legal arguments that the shareholders are the owners of a firm are well summarised by Chassagnon and Hollandts (2014:52):

1. Legal argument that shareholders are the owners of the firm (the firm is the thing owned);

2. Economic argument that the shareholders bear the important risks.

3. Legal-economic argument that shareholders are the residual claimants.

The view commonly held is the shareholders are not only the capital contributors, but also the owners of the company who appoint managers as agents to manage the firm in their interest (Robé, 2011:10). Some academic scholars have the view that the firm cannot be owned by any individual stakeholder. The three arguments, above, for shareholder ownership of corporations such as a JSE-listed company and the SARB, will be discussed further by reviewing literature that argues in favour of and against them.

2.2.1 Legal argument for shareholder ownership

Juridical personality

Jensen and Meckling stated that most corporations are simply legal fictions which serve as a connection for a set of contracting relationships between individuals (1976:310).

The corporation is more than a "legal fiction" and part of the problem is the interchangeable use of the words "firm (or enterprise)" and "corporation (or company)" which is legally incorrect (Robé, 2011:11). This is well addressed by Robé (2011:11):

> "The firm and the corporation are very often confused in the literature on the theory of the firm. The two words are often used as synonyms. They correspond, however, to totally different concepts: a corporation is a legal instrument, with a separate legal personality, which is used to legally structure the firm; a firm is an organized economic activity, corporations being used to legally structure most firms of some significance. […]The corporation cannot be disregarded in the analysis as a mere "legal fiction" as is usually the case: the fact that firms do not have juridical personality and are legally structured around corporations, which do have juridical personality, has very significant consequences in a society in which (a) contracts can only exist between legal persons and (b) property rights, rules, regulations, liabilities and so on are allocated or apply to legal persons."

One consequence of Robé's statement, above, is that managers of the company's assets are the agents of the assets' owner, the company itself (Robé, 2011:11). That company is a separate legal entity that owns assets, while its directors make decisions on its behalf through the authority they receive in the corporate law.

Contrary to common belief, the corporate law in the United States of America does not require directors to maximise shareholder value (Stout, 2012:8); in other words, to manage the company solely in the interest of the shareholders. In South Africa, sec76 stipulates that the directors must act in the best interest of the company (a separate legal person) and not the best interest of the shareholders (*Companies Amendment Act, No. 3 of 2011*, 2011:s76(3)(b)). The company is more than a mere legal fiction and corporate law in South Africa requires directors to be accountable to the company.

This does not negate the fact that the directors have a fiduciary duty towards all stakeholders who are affected by their decisions; shareholders are prominent stakeholders but not the only ones (Robé, 2011:12). In South Africa the fiduciary duty of directors is determined by the common law and also legislated in sec76 of the *Companies Amendment Act, No. 3 of 2011*, directors have to act in the best interest of the company (a separate legal person) and not in the interest of any individual or group of shareholders (SAICA Companies Act Guide 2012:9-27). Even if a majority shareholder appointed a specific director, the director still has a fiduciary duty to act in the best interest of the company (SAICA Companies Act Guide 2012:9-27).

A practical display of this legal principle can be seen when a director is first employed. The parties to the employment contract are the director and the company and not the director and the shareholders. Directors are employed by the company to work for the company. Therefore, corporate directors do not owe shareholders a legal duty of obedience (Blair & Stout, 1999:290):

> "The rules of agency provide that an agent owes her principal a "duty of obedience;" in other words, the principal enjoys control over, and has the power to direct the actions of, the agent. Corporate directors depart radically from this model. As the ultimate decision making body within the firm, they are not subject to direct control or supervision by anyone, including the firm's shareholders."

2.2.2 Economic argument that shareholders bear the important risk

The most important risk, residuary risk, must be accepted by the shareholders and is a higher risk than those borne by the other stakeholders (Easterbrook & Fischel, 1991:11). Fama and Jensen also regarded shareholders as the residual risk bearers, because they accept the risk between irregular inflows and promised pay-outs to employees and creditors (1983:302). The logic is that because shareholders are last in the queue of stakeholders to be compensated, they bear the highest level of risk and therefore it is reasonable for them to have the highest potential reward (the residual earnings).

Stout makes the argument that the shareholders are not the only residual risk bearers; thus, employees and bondholders also bear residual risk which that writer defines as "burdens (risk) above their explicit contracts" (2001:1194). When the company is performing well, the employees receive bonuses and enjoy increased job security while bond holders have increased bond protection. Conversely, the employees and bond holders suffer together with shareholders when the company is in a financially difficult position. Shareholders have the advantage that they can diversify their risk by investing in a portfolio of shares, in contrast to employees who cannot diversify their risk (Chassagnon & Hollandts, 2014:56).

2.2.3 Legal-economic argument that shareholders are the residual claimants

The shareholders are rewarded for their residual risk by receiving the residual claim (Easterbrook & Fischel, 1991:11). These writers argue that managers should run corporations within the bounds of legislation, but with the goal of maximising the wealth for the sole residual claimants; they claim that this approach will assist other constituents automatically (1991:38). The point is not to argue about shareholder wealth maximisation: Easterbrook and Fischel imply that management should run the corporation exclusively for shareholders (owners) as they are the sole residual claimants.

Stout states that there are two flaws in the residual claimant argument (2001:1193). The first is that in practice, shareholders are never the residual claimants, except when there is an actual bankruptcy and the corporation is liquidated. While the firm is a going concern the shareholders will only receive a dividend when the company has enough earnings to permit the payment of one. Furthermore, the directors must actually decide to declare a dividend (Stout, 2001:1193). Secondly, as mentioned above, employees and bond holders also have a residual claim when they receive benefits like bonuses and increased bond protection (Stout, 2001:1194).

2.3 Conclusion: Shareholder ownership versus stakeholder ownership

The philosophy of shareholder wealth maximisation was re-introduced by the Chicago School of Economics in the 1970s (Stout, 2012:19). The underlying principle of shareholder wealth maximisation is that shareholders own corporations; therefore, a review of this notion is important for our discussion of firm ownership. By the close of the millennium it was believed that the great debate between shareholder wealth maximisation and the stakeholder model was won by the Chicago School (Stout, 2012:21). Towards the late 1990s and early 2000s the stakeholder model made a comeback when lawyers wrote in legal journals that the Chicago economists have missed one important point in the debate: that U.S. corporate law does not require public corporations to maximise shareholder wealth (Stout, 2012:23). The debate began, based mostly on economic arguments from the Chicago school, but in recent times the predominant perspective is a legal one.

Robé supports the use of a legal perspective when analysing firm ownership, because ownership in the developed world is defined by the law. Therefore, directors structure firms using legal instruments such as contracts, property rights and companies. The terms of all economic exchanges obtain binding effect through the law and the founders of firms are bound to take into account the legal characteristics of property rights (Robé, 2011:15-16).

The main legal, economic and legal-economic arguments for and against shareholders as owners of corporations, have been examined in the three preceding headings. Even though there is no conclusive winner in the argument if shareholders are the owners of corporations, the strongest and more recent arguments were made from a legal perspective. Therefore, this paper will use a legal perspective to analyse whether the shareholders of JSE-listed companies and the SARB can be viewed as the owners of these corporations. The following part of this literature review chapter will evaluate literature to determine a legal measure for corporate ownership.

2.4 Legal measurement for corporate ownership

In order to answer the sub-question posed in the Introduction, a legal framework must first be determined to measure whether the shareholders of JSE-listed companies and the SARB are indeed the owners of these corporations. Hohfeld noted eight normative modalities (elements and correlatives) to describe legal conception. One of these elements is, for example, a "claim-right" and its correlative "duty," implying that if A has a claim-right to $50 from B, then B has a duty to pay $50 to A (Munzer, 2008:149). The problem with the concept of Hohfeld modalities is that it does not indicate which modalities are involved in property rights to determine the owner of a given thing (Claeys et al., 2011:266).

A classical legal interpretation of ownership was suggested by A.M. Honoré when he noted rights and obligations which can be used to indicate ownership. Honoré (Hodgson & Honoré, 2013:223-255; Honoré, 1961:112-113) puts forward 11 incidents (or characteristics) of ownership and states that none of these, in isolation, can constitute the entitled owner, but collectively they can give guidance regarding the owner of a particular thing in a given legal system.

Hodgson notes that Honoré's definition of ownership takes into account the need for the legal system to allocate ownership, where other definitions by Alchian and Barzel have neglected this (Hodgson & Honoré, 2013:225). There has been some criticism of Honoré's incidents of ownership, notably from Penner who argues that the concept of property is complex; therefore, it must be flexible without any defining incidents of ownership, which might serve to obscure rather than clarify the concept of ownership (Penner, 1995:723-724). Honoré does acknowledge that the standard incidents are not exactly the same for all mature legal systems, but argues that the incidents do not vary as significantly as some scholars suggest (Hodgson & Honoré, 2013:228).

Penner also criticised the notion that property is a "bundle of rights" (Claeys et al., 2011:193-194):

> "Calling property a "bundle of rights" is like calling the human body a "bundle of organs," or a human nervous system a "bundle of cells." It might be appropriate to call a human body a set of organs, but to say "bundle" connotes, further, someone's intentionally binding the organs together into the set they make. […] First, it suggests an intentional binding together of items that previously were separate and independent. Second, it suggests a finite set of definite items."

On the first point that Penner raises above, R.A. Epstein writes much of the criticism about property being a "bundle of rights" stems from the claim that the people who put the bundle together are public authorities who bundle it as they see fit and this can reduce the scope of private rights. Epstein's

view is that these claims are largely misplaced and historically the bundle of rights theory has never reduced the scope of private rights (Claeys et al., 2011:225-229). On the second point of Penner, Munzer writes that one must use a normative model in a bundle of rights theory of property, otherwise "one does not supply students and law teachers with a richer view of property" (Claeys et al., 2011:272).

It is clear there has been much debate about using Honoré's legal incidents interpretation to determine ownership of a given thing in a certain legal system. As Munzer states, using a legal framework as a measurement will help us understand ownership better and will leave us with a richer view of property rights (Claeys et al., 2011:272). A.M. Honoré's original 11 incidents of ownership will be used in this paper as the legal framework to measure whether the shareholders of JSE-listed companies (section 3) and the SARB shareholders (section 4) are the owners of the corporations in which they own shares.

2.5 Conclusion and way forward

This literature review determined that the SARB's unique ownership structure and legal system means that it is not feasible to review case study literature pertaining to previous nationalisations of central banks in other countries. Firstly, the literature review aimed to answer the first part of the sub-question: "are the SARB shareholders the owners of the SARB?" In order to arrive at an answer, the literature review evaluated literature arguing that shareholders are the owners of corporations (mainly agency theory literature), as well as literature arguing the opposite (mainly stakeholder theory literature). None of the literature examined in the review gave a conclusive answer to the question of whether shareholders own the corporations they own shares in, but the most compelling evidence was provided through legal arguments made mainly by the stakeholder theory literature. Consequently, the Honoré legal framework became the chosen measurement of corporate ownership, used to measure whether the shareholders of a JSE-listed company and of the SARB are indeed the owners of the entities they own shares in. It is expected that the shareholders of a JSE-listed company (section 3) will satisfy more of the legal incidents of ownership (the measurement) than the SARB shareholders (section 4). Sections 3 and 4 will seek to answer the first part of the sub-question. The latter part of the sub-question dealing with the SARB shareholders' rights and obligations, is partly answered by section 4 which provides obvious rights and obligations, but section 5 continues by attempting to reveal undisclosed rights and obligations. After an answer has been given for the entire sub-question, "are the SARB shareholders the legal owners of the SARB and what are their rights and obligations?", section 6 concludes by discussing the main question about the impact of nationalising their shareholding.

3. Application of the 11 characteristics of ownership to shareholders of a JSE-listed company

The legal framework proposed by Honoré is used in this section as a measurement to determine whether the shareholders of a JSE-listed company are its owners. Section 4 of this report also uses the Honoré legal framework to measure whether the SARB shareholders are its owners. The reason for first using the legal measure to examine a JSE-listed company is because a listed company, according to agency theory, is owned by the shareholders. Also, according to stakeholder theory, the shareholders are one of the more prominent stakeholders of such a company. In contrast, the SARB's main objective is to protect the value of the currency and the directors have no obligation toward the shareholders (*The Constitution of the Republic of South Africa, No. 108 of 1996, as amended,* 2012:s224). Consequently, it is expected that the SARB shareholders will satisfy fewer legal incidents of ownership than the shareholders of a JSE-listed company.

3.1 Object of ownership

It is important to note that the legal rights and obligations relating to ownership of a company can be analysed from two different perspectives based on what is defined as the thing owned. That can be the company itself (i.e. the assets of the company) or it can be viewed as the shares of the company. Claiming the ownership of company X and claiming the ownership of company X's shares are two very different claims (Chassagnon & Hollandts, 2014:55). Robé maintained that shareholders do no own companies; what they own is the shares issued by the companies. Consequently, shareholders can only enjoy privileges in terms of the shares they own and not towards the corporation having issued the shares (Robé, 2011:11). Strasser commented on the article of Robé and confirmed this view by writing that shareholders own a "bundle of specific rights, including the right to participate in selecting the directors" and "the right to the residual profits" (2011:9).

The method of legal measurement used in the next two sections of this report will regard the thing owned as being either the company itself or its assets. This is because there is no doubt that the shareholders are the owners of the shares (Chassagnon & Hollandts, 2014:55). Thus, shareholders have exclusive control over their shares, the right to remain in control and the right to use and manage their shares as they wish. Moreover, they have the right to income in the form of dividends, they can sell their shares at whatever price to whomever or retain ownership for an indefinite period (Robé, 2011:35).

3.1.1 The right to possess

Honoré (Hodgson & Honoré, 2013:231) notes that the right to have "exclusive physical control" or "to have such control as the nature of the thing admits" is "the foundation on which the whole superstructure of ownership rests." This characteristic is divided into two aspects: (i) the right to have exclusive control of a thing and (ii) the right to remain in control.

i. The right to have exclusive control of a thing

If a shareholder owns the majority shares of a listed company, then that person would be in the position to appoint at least 50% of the board of directors (*Companies Amendment Act, No. 3 of 2011*, 2011:s66(4)(b)) and indirectly control the company. The executive directors have, as a board, collective control of the company and its assets, but within the limits of the regulatory framework. It is important to note that although the majority shareholder obtains indirect control of the company by appointing 50% of the directors, that person does not become the owner of the company or obtain direct control over its assets (Robé, 2011:35). The board of directors has been contracted by a separate juristic person, the company itself, to manage it on behalf of all the stakeholders. As explained in section 2, the directors have a legal and fiduciary duty to act in the best interest of the company, encompassing all the stakeholders, and not only the shareholders. This greatly reduces the control a majority shareholder has over the board of directors and accordingly it reduces their indirect control over the company and its assets.

Most JSE-listed shareholders have a minority shareholding and individually they are not in a position to appoint or dismiss the directors. Consequently, shareholders in general do have some indirect control, but not exclusive control over the company or its assets.

ii. The right to remain in control

The right to remain in control entails protection by legislation of the right to possess and provides ownership to one person instead of another (Hodgson & Honoré, 2013:232). The trading of shares of a JSE company is strongly regulated by the Financial Markets Act (2012) and the JSE Equities Rules which protect the ownership of the shares by the shareholder. The object of ownership of this analysis is not the shares of the company, but the company itself and its underlying assets. As noted above, shareholders do not have exclusive control of the company or its assets and because no right exist, no legislative rules can exist. The absence of rules prove that the shareholders do not have the right to be or remain in control.

Conclusion regarding the right to possess:

Shareholders of a listed company do not have the right to possess, exclusively, the company or its assets, but a majority shareholder will be able to have a significant influence on the company's decisions. Consequently, shareholders only partly satisfy the legal characteristic of ownership designated 'right to possess.'

3.1.2 The right to use

Honoré (Hodgson & Honoré, 2013:233) relates the owner's right to use, to personal use or personal enjoyment of the thing owned. A shareholder has similar rights to those of a public customer in terms of the personal use and enjoyment of a JSE company and its assets. To illustrate this point, consider the following example. Thus, Combined Motor Holdings (CMH) Limited owns 100% of CMH Car Hire (Pty) Ltd, trading as First Car Rental. A shareholder of the JSE-listed company CMH Limited, will be able to rent a vehicle from a First Car Rental branch, but on the same terms and conditions as the general public. The shareholding in CMH Limited will not provide the shareholder the right personally to use the company's assets. The company's shareholders are seen as part of the public and have similar rights to those of normal customers. Shareholders of listed companies have no right to use the assets of the company for personal enjoyment.

Legally speaking, the shareholders do not own the assets of the company, because the assets and liabilities of the company are partitioned from the assets and liabilities of the shareholders (Robé, 2011:11). The assets are owned not by the shareholders, but by a separate juridical entity, the company itself (Robé, 2011:11).

The shareholders do not have the right of use of the company or its assets and therefore do not satisfy the legal characteristic 'right to use.'

3.1.3 The right to manage

Honoré (Hodgson & Honoré, 2013:233) states that the right to manage is "the right to decide how and by whom the thing owned shall be used." In terms of ownership of a business, the power to direct how resources are to be used is one of the essential types of economic and political power (Hodgson & Honoré, 2013:233). The shareholders only have the ability to elect and remove directors and they have the right to vote on certain "fundamental corporate changes" (Blair & Stout, 1999:310). Blair and Stout argued that a typical public listed company has a widely dispersed share ownership which renders their voting rights meaningless and that shareholders normally follow whatever management recommends (Blair & Stout, 1999:310). The fundamental corporate changes are basically veto rights and the shareholders cannot initiate these changes (Blair & Stout, 1999:311). In South Africa, this is

also the case because the *Companies Amendment Act, No. 3 of 2011,* prescribes the need for special resolutions whenever shareholders are required to approve certain actions. Examples include:

- sec16(1)(c) to change the Memorandum of Incorporation;
- sec20(2) ratification of directors actions above their authority;
- sec 41(1) shareholder approval for directors to issue shares in certain cases;
- sec44(3)(a)(ii) financial assistance for subscription of securities;
- sec45(3)(a)(ii) financial assistance to directors;
- sec112(2) disposal of greater part of assets

(See *Companies Amendment Act, No. 3 of 2011*, 2011).

These special resolutions are prompted by the directors for shareholder approval and the shareholders are mostly bystanders as far management's actions are concerned.

The right to manage is legally provided to the directors by the *Companies Amendment Act, No. 3 of 2011*. That Act stipulates that the business and affairs of a company must be managed by the directors, who have the authority to exercise all of the powers and perform all of the functions of the company (*Companies Amendment Act, No. 3 of 2011*, 2011:s66(1)). As mentioned previously, the directors are not controlled by the shareholders but act on behalf of a separate juristic person, the company itself. In practice the directors are free to decide how the resources of the company are used and do so with autonomy.

To summarise: shareholders of a JSE-listed company do not have the right to manage the resources of that company and therefore they do not satisfy this characteristic.

3.1.4 The right to income

The right to income has also been termed the right to "resulting income" (Chassagnon & Hollandts, 2014:54). As stated in the literature review, Mikami (2011:1) wrote that the shareholders in a capitalist firm have the right to receive the firm's residual earnings and therefore they are regarded as the firm's owners.

Stout argued the opposite view, noting that the only occasion when corporate law comes close to treating shareholders as residual claimants is in the case of bankruptcy (2001:1193). When a public company is a going concern, shareholders will only receive income when the company is doing well financially and the directors actually declare a dividend (2001:1193). The directors of public companies often retain the residual earnings to invest in future projects; they are not distributed as a dividend.

For a JSE-listed shareholder, the right to company income is limited and solely dependent on the directors' discretion. In terms of sec 46 the directors have to perform solvency and liquidity tests on the company before any distributions to shareholders can be paid (*Companies Amendment Act, No. 3 of 2011*, 2011:s46). The directors need to ensure that after the dividend distribution, the company's assets exceed its liabilities (solvency) and that the company will be able to settle its debts as they become due for the next 12 months (liquidity) (*Companies Amendment Act, No. 3 of 2011*, 2011:sec 4(a)-(b)). The directors will always need to ensure that following a distribution, reserves are retained in the company. In most cases the company's resulting income will not be declared as a dividend in totality.

In terms of sec 77 the directors can be held personally liable if they do not perform the solvency and liquidity tests or if they fail to vote against the dividend distribution at a directors' meeting and the company goes bankrupt (*Companies Amendment Act, No. 3 of 2011*, 2011:sec 77). Consequently, as legislation currently exists in South Africa, directors make decisions on distributions independently from shareholders and take due care to avoid personal liability.

Shareholders in JSE-listed companies do not satisfy the "right to income" characteristic as they are not entitled to the resulting income. They have no influence on decisions whether to distribute a dividend, or the amount, but have to wait for the directors to declare a dividend.

3.1.5 The right to capital

The right to capital involves the power to alienate or destroy, and the freedom to consume the thing owned (Hodgson & Honoré, 2013:235). Most people do not wilfully destroy assets and so the power of alienation is the more important aspect of the owner's right to the capital of the thing owned (Hodgson & Honoré, 2013:235).

i. The power to alienate

The power to alienate is subdivided into the power to make a valid disposition of the thing owned and the power to transfer the holder's title. Shareholders do not have the power to transfer the title of the company or its assets to another holder, and they can only transfer or dispose of the property they own, which is the shares themselves. This is well described by Robé (2011:36):

> "Their lack of ownership is such that, strictly speaking, shareholders cannot even sell the corporation. In the real world, there is no such thing as a "Company Sale and Purchase Agreement;" what exist are "Share Sale and Purchase Agreements" ("SPAs") because only shares exist as property rights and can be bought and sold; companies are not property rights and no one has ever been able to buy or sell a "company" in the strict sense of the word."

The directors of a company have a statutory obligation in terms of sec 76(3)(b) to manage the company in the best interests of all the stakeholders (*Companies Amendment Act, No. 3 of 2011,* 2011:s76(3)(b)); these obligations include safeguarding the company's assets from shareholder alienation.

ii. The right to financial capital

The term 'financial capital' can refer to the liquidation payment after creditors are paid or to loans made by the company to shareholders.

When companies are liquidated, shareholders receive a capital pay-out after creditors and secured debt holders have been paid. This will only take place under exceptional circumstances (Chassagnon & Hollandts, 2014:56), because the net capital pay-out is normally negligible when compared to the initial capital investment.

In South Africa, all financial assistance (loans or securing of debt) provided to related parties of a company (including shareholders) should be first approved by the shareholders through a special resolution; afterwards, if the directors deem that certain criteria have been met, then the board itself should approve it. The board of directors takes ultimate responsibility for financial assistance and they can be held personally liable if in contravention of sec 77 the *Companies Amendment Act, No. 3 of 2011*. A shareholder does not have access to the financial capital of the company.

Consequently, a shareholder in a JSE-listed company does not satisfy the characteristic of the right to capital.

3.1.6 <u>The right to security</u>

The right to security is described in terms of being able to retain ownership of the "thing owned" for an indefinite period. Retaining ownership for an indefinite period requires legal protection from expropriation (Hodgson & Honoré, 2013:235). The Constitution of South Africa (2012:s25(2)) states that property may only be expropriated in the public interest when it is subject to compensation which is "just and equitable" (1996:s25(3)).This protection cannot be enforced by shareholders of a JSE-listed company as ownership of the company and its assets does not vest in the shareholders. As argued in the five points above, the shareholders do not have the right to possess, the right to use, the right to manage, the right to income and the right to capital. Therefore they cannot enjoy the right to security of the company itself.

The protection given by the Constitution will only provide the shareholders the right to security of what they actually own, which is their shares. To summarise: the characteristic of the right to security is not satisfied by shareholders of JSE-listed companies.

3.1.7 The characteristic of transmissibility

One of the characteristics of ownership is the right to transfer property to one's successors (Honoré, 1961:120). As argued above, in the discussion of the right to capital, the company itself cannot be transferred in a sale agreement; only the shares of the company can be sold. From this, the logical conclusion is that the company itself cannot be transferred to successors but only the shares of the company.

The characteristic of transmissibility is not satisfied by shareholders of JSE-listed companies.

3.1.8 The characteristic of absence of term

For ownership to exist, there must be no time limit on the rights and obligations relating to ownership of the thing owned (Honoré, 1961:121). Whenever an owner passes away and property is transferred to an heir in terms of characteristic no. 7 – transmissibility - the heir must also be able to retain ownership for an unlimited period. As explained in the discussion of transmissibility, above, the company itself cannot be owned and therefore no term can exist for which ownership can be retained by an heir.

The characteristic of absence of term is not satisfied by shareholders of JSE-listed companies.

3.1.9 The prohibition of harmful use

In many instances, there are rules which determine the manner in which the owner can use the thing owned, in order to avoid harming other members of society. There are no rules which prohibit the shareholders from using the company in a certain manner and this absence of rules is because they have no direct control over the company. The absence of such rules supports the view that shareholders are not the owners of the company; thus, they do not have direct control over the company, but only indirect control through the directors whom they can appoint. There are rules such as in the King Report on Corporate Governance and the Companies Act of South Africa, which prohibit the directors from using the company in a harmful manner.

The characteristic entailing the prohibition of harmful use is not satisfied by shareholders in JSE-listed companies.

3.1.10 Liability to execution

The liability to execution characteristic entails the seizure of the thing owned from the owner to settle outstanding debts due to a creditor (Honoré, 1961:123). Non-owners can settle outstanding debts of the owner of the thing owned, by using their right to object to sheriff officers. A creditor of a shareholder in a JSE-listed company may seize the shareholder's shares, but not the underlying assets of the company or the company itself. The company is a separate juristic entity and its assets cannot be executed to settle the debts of shareholders. If the assets of a listed company are pledged as security for shareholder debts, the assets can be executed. However, if the company's assets are pledged as security for the shareholders' debts, it would fall within the ambit of sec 45 of the *Companies Amendment Act, No. 3 of 2011*, which sets out the principles of financial assistance to related parties. The terms of the financial assistance must be "fair and reasonable" to the company (*Companies Amendment Act, No. 3 of 2011*, 2011:sec 45). Only in exceptional circumstances, involving the best interests of the company as a whole, will the directors pledge the assets of the company as security for shareholders.

As a general rule, the assets of the company may not be executed to settle the debts of the shareholders. Therefore, the characteristic of liability to execution is not satisfied by shareholders of JSE-listed companies.

3.1.11 Residuary character

When an interest in an item which is less than ownership terminates after a given period or suspensive condition, a legal system will normally provide that this lesser interest falls back to the residual interest holder (i.e. the owner) (Honoré, 1961:127). This is especially true for property which can be rented to a tenant who holds the lesser interest to use the property for a period. When the rental period expires, this lesser interest returns to the residual interest holder (the title deed owner) of the property. Should the property be damaged by the tenant then the residual risk is born by the title deed owner. Residuary character can be divided in terms of residual income and residual risk.

As previously explained, in the case of a JSE-listed company, the employees and bondholders also bear the burden of residual risk; this is because if the company is financially distressed, then employees have reduced job security and bond holders run the risk of forfeiting coupon payments of interest. The shareholders have the added advantage that they can diversify their residual risk by investing in a portfolio of shares, while employees normally only hold one employment position. Employees can also receive residual income, in the form of bonuses, if the company is doing well.

The residuary characteristic is partly satisfied by a shareholder in a JSE-listed company; however, as explained, there are other stakeholders who also satisfy the residuary character.

3.2 Conclusions: legal characteristics pertaining to ownership of shares in JSE-listed companies

Characteristics of Ownership:	**Not satisfied**	**Partly satisfied**	**Satisfied**
1. Right to possess		X	
2. Right to use	X		
3. Right to manage	X		
4. Right to income	X		
5. Right to capital	X		
6. Right to security	X		
7. Characteristic of transmissibility	X		
8. Characteristic of absence of term	X		
9. Prohibition of harmful use	X		
10. Liability to execution	X		
11. Residuary character		X	

The general perception is that a shareholder owns a fraction of a company as the thing owned, but this is not correct. Thus, owning shares is not the same as co-owning a company (Robé, 2011:36):

> "The word "share", in this regard, is a bit of a misnomer because shareholders do not share the use of any property they would own in common. A share is not a fraction of some larger object of property right: a shareholder owning 34 of the 100 shares issued by a corporation does not own 34 percent of each share - which would be a co-ownership with the other shareholders - she owns 100 percent of each of the 34 shares. And she does not own 34% of the corporation either; she owns 34% of the shares issued by the corporation. The difference is very important and will be particularly significant when the company will become public, i.e. when its shares will be listed on a regulated market, which will allow shareholders to sell all or part of their shares as they please, each as an autonomous object of property, in total autonomy from the other shareholders and from the other shares."

The preceding analysis of the incidents of ownership indicates that a JSE-listed company is not owned by the shareholders. This finding is in contrast to a large body of finance textbooks, which state that ownership is in the hands of shareholders (Correia et al., 2015:1-6), and that managers run the companies in the shareholders' best interest (van Wyk, Botha & Goodspeed, 2006:369). One reason for this difference is that finance textbooks take an economic approach to explain in simple terms the

separation between directors and the shareholders, and what their roles are. The other reason is that the textbooks do not take a technical legal approach to explain what the rights and obligations are specifically for a public company shareholder. The textbooks refer to public and private companies in general when seeking to explain how a company functions, but in practice a public company shareholder is less likely to call management to account in the way the shareholder of a private company would.

The company is not an object of property rights (Robé, 2011:35). The preceding analysis of the 11 characteristics of ownership as per the Honoré legal framework (the measurement) has determined that the shareholders of a JSE-listed company own the shares of the company and enjoy the rights and obligations thereof; they do not own the listed company itself or its underlying assets.

4. Application of the 11 characteristics of ownership to shareholders of the South African Reserve Bank

This section will first review the history of the SARB and highlight some key pieces of legislation which will be referred to, in this section as well as in section 5. This section uses the Honoré legal framework applied in section 3, to measure the extent to which SARB shareholders are the legal owners of the SARB. It is expected that the shareholders of a JSE-listed company will satisfy more of the legal incidents of ownership (the measurement) than the SARB shareholders.

4.1 Introduction – History of the Reserve Bank

The Reserve Bank of the Republic of South Africa is the oldest central bank in Africa (SARB, 2017c). After the First World War (1914 - 1918) the price of gold in the United Kingdom rose significantly above the price in South Africa (SARB, 2017d). Currency holders in South Africa had the right to exchange currency for gold at any South African Bank. The wide spread in the gold price between South Africa and the United Kingdom created an arbitrage opportunity to exchange currency for gold in South Africa and sell it again in London. The commercial banks in South Africa had to buy gold in London to back their currency and import it to South Africa. This created a situation where the banks were trading at a loss and they requested the South African Government to release them from the obligation to convert banknotes into gold. A committee of Parliament was established and it recommended the establishment of a central bank to assume the responsibility for issuing banknotes and for backing the currency with gold. Parliament accepted the recommendations of the committee and promulgated the *Currency and Banking Act in 1920, Act No. 31 of 1920*, which provided for the establishment of a central bank. The Reserve Bank was established on 30 June 1921 (SARB, 2017d).

The SARB is only one of six central banks in the world in which the general public can own shares (Rossouw & Rossouw, 2017:15).

4.2 Reserve Bank Mandate and Governance

The Reserve Bank's Mandate is enshrined in s224 of the Constitution (2012:115):

- The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.
- The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters.

In terms of the *South African Reserve Bank Amendment Act, Act No. 4 of 2010*, (2010:s4) the bank shall be governed by fifteen directors as follows:

(a) a Governor, and three Deputy Governors who shall be appointed by the President of the Republic, after consultation with the Minister and the board, as well as four other directors appointed by the President, after consultation with the Minister; and
(b) seven directors elected by the shareholders from candidates confirmed by the Panel.

The seven directors elected by the shareholders can be nominated to the Panel by any shareholder or member of the public. The panel will then go through the nominations and the three most suitable candidates for a position will be nominated (*South African Reserve Bank Amendment Act, No. 4 of 2010*, 2010:s4(1H)).

The Panel shall comprise (*South African Reserve Bank Amendment Act, No. 4 of 2010*, 2010:s4(1D)):
(a) the Governor as chairperson;
(b) a retired judge and one other person, both nominated by the Minister; and
(c) three persons nominated by NEDLAC (National Economic, Development and Labour Council)

4.3 Monetary Policy Committee

The SARB has used an inflation targeting framework since February 2000. The Monetary Policy Committee is responsible for setting interest rates in order to keep inflation between the 3-6% target range (SARB, 2018a). The monetary policy committee normally consists of eight members of the Bank: the Governor, three deputy governors and four senior officials of the Bank (SARB, 2017e). As at 2 January 2018, the monetary policy committee consists of six members of the Bank: the Governor, three deputy governors and two senior officials of the Bank (SARB, 2017g). In terms of influencing economic policy, the monetary policy committee is the single most important committee of the SARB

and none of the members is appointed by the shareholders. Rossouw agrees that a central theme of global central banks, including the SARB, is that shareholders play no role in the formulation and implementation of monetary policy (Rossouw, 2016:158).

The Honoré legal framework will be used in the following section to measure whether the SARB shareholders are the legal owners of the SARB.

4.3.1 The right to possess

i. The right to have exclusive control of a thing

A SARB shareholder may only hold 10 000 shares (*South African Reserve Bank Amendment Act, No. 4 of 2010*, 2010:s22(2)(a)). This limitation includes the aggregate of shares held by "associates," being defined as close family members or any person with whom the shareholder has entered into an agreement concerning the voting rights of the SARB shares. Because of this restriction, it is clear that a single SARB shareholder may not have exclusive control over the entire shareholding.

The object of property is the SARB itself and not the shares. Even if a shareholder were able to own all the shares, this would only enable that shareholder to appoint 7 of the 15 directors on the board. The remaining 8 are appointed by the President of South Africa after consulting with the Minister. Furthermore, the selection panel for the 7 directors appointed by the shareholders consists of the Governor, a retired judge and another (appointed by the Minister), and three persons nominated by Nedlac. The shareholders have no say in selecting the nominees even though they can vote for the nominees put forward by the panel. At board level the shareholders have some influence to appoint directors, but it is insignificant compared to the influence of the President and the Minister. The Minister of Finance is also appointed by the President. The point is that the SA Government through the President (with help of the Minister and their appointed Panel members), can put forward their candidates of choice and therefore can indirectly appoint the 7 non-executive directors. The shareholders can only choose between one of three candidates favoured by the SA Government.

In the case of a JSE-listed company, the directors have a duty to act in the best interest of the company (which indirectly includes the shareholders), but SARB directors do not have to consider its shareholders when making decisions. The directors' "functions and powers" listed in the Act do not place any obligation on the board to govern the bank in the interests of the shareholders (*South African Reserve Bank Amendment Act, No. 4 of 2010*, 2010:s4A). The shareholders have no legal cause of action against directors who do not act in their interests.

The shareholders of the SARB have an insignificant amount of control over the Bank.

ii. The right to remain in control

As explained above, the shareholders have an insignificant amount of control over the Bank and therefore have no right to remain in control.

Conclusion on the right to possess:

The SARB shareholders do not have the right to possess the SARB or its assets.

4.3.2 The right to use

This right relates to personal use and enjoyment of the thing owned. As in the case of a JSE- listed company, the shareholders do not own the assets of the SARB, as it is separate from the assets and liabilities of the shareholders.

The shareholders do not have the right to use the SARB or its assets.

4.3.3 The right to manage

The right to manage a business is the power to direct how resources are to be used and exploited. As in the case of a JSE-listed company, the right to manage has been delegated to the directors of the SARB and they act on behalf of the SARB and not the shareholders.

The directors of a JSE-listed company have a fiduciary duty towards all parties who are affected by their decisions; shareholders rank prominently but they are not the sole stakeholders. This is in contrast with SARB directorship, as legislation do not require the board to consider its shareholders at all when making a decision (*South African Reserve Bank Amendment Act, No. 4 of 2010*, 2010:s4A). The directors' responsibilities are listed in sec 4A of the *South African Reserve Bank Amendment Act, No. 4 of 2010*, and are very specific; they do not impose any requirement on the directors to manage the Bank in the interest of stakeholders whatsoever.

Similar to a shareholder of a JSE-listed company, a SARB shareholder does not have the right to manage the Bank.

4.3.4 The right to income

The right to the surplus income of the SARB has been set out by sec 24 (*South African Reserve Bank Act, No. 90 of 1989*, 1989):

> "Of the surplus (if any) remaining at the end of a financial year of the Bank after provision has been made for-
>
> (a) bad and doubtful debts;

(b) depreciation in assets;

(c) gratuities or other pension benefits for its officers and employees;

(d) all such items as are usually provided for by bankers; and

(e) the payment to the shareholders, out of net profits, of a dividend at the rate of ten per cent per annum on the paid-up share capital of the Bank, one tenth shall be allocated to the reserve fund of the Bank and nine-tenths shall be paid to the Government."

The paid-up capital or share capital according to the SARB Statement of Financial Position at 31 March 2017 was R2 000 000 (SARB, 2017f:71). When recalculated, the dividend paid to SARB shareholders is an amount of R200 000 (R2 000 000 x 1/10) for the 2016/2017 financial year. Although the Act (*South African Reserve Bank Act, No. 90 of 1989*, 1989:s21(3)) makes provision for an increase in the paid-up share capital, the annual reports from 1995 to 2017 were inspected and it was found that this amount remained unchanged during this period at R2 000 000. Consequently, the dividend paid to equity shareholders also remained unchanged at R200 000 from 1995 to 2017.

The SARB dividend is not within the directors' discretion and shareholders are almost certain that they will receive it. The amount of dividends received is fixed and is not increased annually to adjust for inflation, which is similar to coupon interest payments to bond holders. Therefore, SARB shareholders have an even smaller claim to the resulting income than shareholders in JSE-listed companies; the latter receive a dividend that can increase if profitability increases although the opposite also applies. To conclude: SARB shareholders have no claim to the resulting income of the SARB.

4.3.5 The right to capital

The right to capital includes the power to alienate or destroy and the freedom to consume the thing owned (Hodgson & Honoré, 2013:235). The SARB or its assets may not be alienated, destroyed or used by the shareholders of the SARB. A SARB shareholder cannot lay claim to the capital or receive a loan from the SARB.

The SARB can only be placed under liquidation by an Act of Parliament and in such an unlikely event the reserve fund and surplus assets (if any) shall be divided 40% to the shareholders and 60% to the SA government (*South African Reserve Bank Act, No. 90 of 1989*, 1989:s38).

Consequently, a SARB shareholder does not satisfy the characteristic of the right to capital.

4.3.6 The right to security

The right to security entails the right to retain ownership of the thing owned for an indefinite period. As argued in the five preceding points, the SARB shareholders do not have the right to possess, the right to use, the right to manage, the right to income and the right to capital; therefore they cannot enjoy the right to security.

The characteristic of the right to security is not satisfied by SARB shareholders.

4.3.7 The characteristic of transmissibility

SARB shareholders cannot transfer ownership of the SARB itself or the SARB assets to their successors. They can only transfer to their successors the rights they have, which are the limited rights that pertain to SARB shares as set out above.

The characteristic of transmissibility is not satisfied by the SARB shareholders.

4.3.8 The characteristic of absence of term

For ownership to exist there must be no time limit on the rights and obligations relating to ownership of the thing owned (Honoré, 1961:121). As explained in the preceding review of the characteristic of transmissibility , the shareholders do not have rights in respect of the SARB itself or the SARB assets and therefore no term can exist for which ownership can be retained by the shareholders.

The characteristic of absence of term is not satisfied by SARB shareholders.

4.3.9 The prohibition of harmful use

There are no rules which prohibit the SARB shareholders from using the SARB in a certain manner; there is no need for any such rules as shareholders have no control over the SARB. The absence of such rules supports the view that shareholders are not the owners of the bank.

The incident of prohibition of harmful use is not satisfied by SARB shareholders.

4.3.10 Liability to execution

A creditor of a SARB shareholder will possibly be able to seize the shareholder's shares held, but not the underlying assets of the SARB itself. The incident of liability to execution is not satisfied by SARB shareholders.

4.3.11 Residuary character

i. Residual income

The shareholders receive a fixed dividend of R200 000 per annum. Of the residual income, 90% accrues to the SA Government with the remaining 10% being kept in the reserve fund of the Bank. The shareholders do not have a right to the residual income.

ii. Residual risk

The SARB shareholders do not bear the residual risk as they are compensated with their dividend payment before the SA Government receives the resulting income. The SA Government receives 90% of the resulting income to compensate it for the residual risk.

The residuary characteristic is not satisfied by the SARB shareholders.

4.4 Conclusion: legal characteristics of SARB shareholder ownership

As expected, it has been shown that the SARB shareholders satisfy fewer of the legal incidents of ownership than shareholders of a JSE-listed company (see section 4). Indeed, the SARB shareholders satisfied none of the incidents of ownership (the measurement used), because they are not stakeholders in whose interest the SARB is managed.

The SA Government satisfies more of the Honoré incidents of ownership. For example, the Government can appoint 8 of the 15 directors and has control over the nominations of the remaining 7 directors (right to possess and right to manage). This is an important point, because the 7 directors voted for by the shareholders are all nominated by the SA Government through the President (with help of the Minister and their appointed Panel members). The 7 directors are supposedly chosen by the shareholders but in practice, they are indirectly chosen by the SA Government. Because of this, the shareholders' influence at board level is greatly reduced.

The SA Government receives 90% of the resulting income and bears the resulting risk as it receives its income after the shareholders (right to income and residuary character). The *SARB Act, No. 90 of 1989*, *SARB Amendment Act, No. 4 of 2010*, and *SARB Regulations 2010* all provide rules to determine the powers of government in the appointment of directors and prescribe certain powers to government. Other powers are exclusively reserved for parliament to prohibit harmful use of the SARB by the government to the detriment of the public (prohibition of harmful use). One such power is the liquidation of the SARB which can only be actioned by parliament (*South African Reserve Bank Act, No. 90 of 1989*, 1989:s38(1)). The SA Government satisfies more of the legal ownership characteristics

than the SARB shareholders and is therefore the more likely owner of the SARB, based on the Honoré legal principles.

In conclusion: the sub-question "are the SARB shareholders the owners of the SARB and what are their current rights and obligations?" has now partly been answered. Thus, the answer to the first part of the sub-question is that the SARB shareholders are not the legal owners of the SARB. The latter part of the sub-question dealing with the rights and obligations of the SARB shareholders has been partly answered above, during the review of obvious shareholder rights and obligations. Section 5 will attempt to reveal undisclosed rights and obligations.

5. Undisclosed SARB shareholders' rights and obligations

In this section an attempt is made to determine undisclosed shareholder rights and obligations by establishing the motive of shareholders to own SARB shares. Those motives to hold SARB shares can reveal undisclosed rights (benefits) and obligations of shareholders. A complete understanding of shareholder rights and obligations will answer the latter part of the sub-question, which will provide a basis to determine the effect of nationalising the private shareholding of the SARB. Shareholder rights and obligations will cease to exist in a nationalisation scenario and therefore it is important to determine a complete list of rights and obligations.

5.1 Profit as a motive to invest in SARB shares

Shareholders can obtain a return on their investments by making a capital gain, by receiving dividends and by receiving a distribution when the entity is liquidated or nationalised.

5.1.1 Capital gain as a profitability motive to invest in SARB shares

Investors realise a capital gain on shares when they buy shares and then, after the share price increases, sell them at a higher price. This share price increase is normally driven by an increase in the company's expected future earnings. The total SARB earnings are 90% distributed to the SA government and 10% kept in a reserve fund; consequently, there is no possibility of an increase in future earnings attributable to shareholders. The dividend is also capped (*South African Reserve Bank Act, No. 90 of 1989*, 1989s24(e)) and any increase in future earnings will not be distributed to the shareholders. Shareholders cannot expect an increase in share price driven by an increase in future earnings.

It is possible that shareholders might invest in SARB shares with the hope of an increase in the share price caused by something other than an increase in the future earnings. The SARB Act imposes a limitation on the capital gain amount such a shareholder can make, because the Act restricts a

shareholder to a maximum of 10,000 shares. The maximum year-on-year capital gain or capital loss based on a shareholding of 10,000 shares, and the average annual share price movement, are indicated in Table 1. The 2007 - 2008 year-on-year capital gain can be calculated by subtracting the 2008 average share price (R3.42) from the 2007 average share price (R1.60) and multiplying it with the maximum shareholding of 10,000 shares. Capital gains are indicated as positives and capital losses as negatives in brackets.

Table 1 - Maximum year-on-year capital gain/(loss) based on 10 000 share maximum and an average share price movement

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Maximum YoY capital gain/(loss) (ZAR) (10,000 shares x average share price movement YoY)	18 200	68 700	7 600	12 100	(9 000)
	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
Maximum YoY capital gain/(loss) (ZAR) (10,000 shares x average share price movement YoY)	(57 900)	200	(27 000)	(10 500)	27 100

The information is based on table 4 data attached in the appendix. The data was obtained from the SARB legal Services department and is not available at other public sources.

Table 1 indicates the best- and worst-case capital gain or capital loss scenarios based on the maximum shareholding of 10,000 shares. As at 30 November 2017, the SARB had 775 shareholders and an issued share capital of R 2 000 000 (SARB, 2017a) which translates into an average shareholding of 2 581 shares per shareholder. This average shareholding multiplied by the year-on-year average annual share price movement, results in a capital gain or loss lower than in Table 1. See Table 2 below.

Table 2 - Average capital gain/(loss) based on 2581 shares and an average share price movement

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Average capital gain/(loss) (ZAR) (2581 shares x average share price movement YoY)	4 697	17 731	1 962	3 123	(2 323)
	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
Average capital gain/(loss) (ZAR) (2581 shares x average share price movement YoY)	(14 938)	52	(6 966)	(2 709)	6 992

The information is based on table 4 data attached in the appendix. The data was obtained from the SARB legal Services department and is not available at other public sources.

The returns indicated in Table 2 are low, even for the average South African citizen. The average non-farming South African citizen earned a monthly gross income of R19 170 during May 2017 (StatsSA, 2017), and the capital returns shown in Table 2 are even less than this.

Another indication that shareholders do not invest in SARB shares with the motive of making a capital gain on the share price growth, is the low share liquidity. The SARB was delisted from the JSE stock exchange on 2 May 2002 which decreased the share's liquidity. Table 3 displays the percentage of issued shares traded on an annual basis. Robust evidence has been found in studies that a positive correlation exists between stock returns and market liquidity (Jun, Marathe & Shawky, 2003:22; Gervais, Kaniel & Mingelgrin, 2001:877).

Table 3 - Percentage of total issued shares traded annually

Table 3	2007	2008	2009	2010	2011	2012
Percentage of issued shares traded annually for the year ended 31 March:	4.7%	3.5%	2.9%	6.4%	3.8%	1.1%
	2013	2014	2015	2016	2017	
Percentage of issued shares traded annually for the year ended 31 March:	1.9%	2.6%	5.9%	3.7%	1.8%	

The information is based on table 4 data attached in the appendix. The data was obtained from the SARB legal Services department and is not available at other public sources.

Based on the evidence above, it would be reasonable to conclude that most SARB shareholders would not buy SARB shares hoping to make a capital gain on any increase in the share price. The future earnings are not attributable to the shareholders and the average amount of shares owned limits the prospect of a reasonable capital gain. The low share liquidity confirms this conclusion.

5.1.2 Dividend income as a profitability motive to invest in SARB shares

A second obvious motive for people to invest in SARB shares is to receive dividends. Gordon's dividend model is a widely-used method to value a share based on its dividend income. One major criticism of Gordon's model is that the valuation formula is influenced by a company's dividend policy. The dividend policy can be manipulated by management in order to improve a valuation. The dividend policy of the SARB is determined by legislation and future dividends are fixed. Consequently the two variables 'growth rate in profits' and 'dividend pay-out ratio' are fixed and certain, which makes Gordon's model an appropriate method to value the SARB shares. The formula adjusted for the known variables, discounts the value of the future dividends at the required rate of return which investors have for a given time horizon. The simplified formula for Gordon's dividend model is:

$$P0 = \frac{D1}{r - g}$$

Here, P0 = Price of the SARB's stock at valuation date, D1 = The annual dividend received, r = the required rate of return for equity investments and g = the growth rate of the dividends.

If the SARB shares were valued based on Gordon's Dividend Growth Model, the inputs would be as follows:

D1 – Annual dividend of R 0.10 as each share annually receives a capped dividend of R 0.10. Although the dividend can be less, a review of the SARB annual reports for the last 12 years from 2006 to 2017 confirmed that the dividend was indeed R0.10 per share. The tax rate of individual and company shareholders will differ, because companies are currently exempt from dividends tax. Dividends tax will be ignored in the dividend received and a pre-tax discount rate will be used.

r – The required rate of return of normal equity investments is not an appropriate rate to use as SARB shares do not have the normal attributes of an equity or preference share. The shareholders are not entitled to the residual earnings, but receive a fixed dividend of R 0.10 per share. The government is responsible for any losses the SARB incurs on its operations; examples would include losses on the trading of gold (*South African Reserve Bank Act, No. 90 of 1989*, 1989:s25(2)) and losses on the trading of foreign currencies (*South African Reserve Bank Act, No. 90 of 1989*, 1989:s26(1)). If the SA Government defaults on its debt, then SARB shares will also become worthless as the SA Government

is responsible for the financial support of the SARB. It can be argued that the required rate of return of SARB shares and government debt is similar, as their risk of default is similar. Rossouw and Rossouw also agreed that SARB shares resemble SA Government bonds more than JSE-listed shares, noting that the SARB dividends are not increased and therefore its dividend payments are similar to the coupon interest of a bond (2017:14).

It is difficult to estimate the average length of time that SARB shareholders hold their shares and therefore a short-term (4 year) and a long-term (30 year 11 month) SA Government Bond will be used to determine maximum and minimum valuations. The yield for the R208 SA Government Bond expiring 31 March 2021 will be used as the required rate of return to determine a maximum valuation. The yield for the R2048 SA Government Bond expiring 28 February 2048 will be used as the required rate of return to determine a minimum valuation. The average yield data was obtained from Bloomberg for the period 1 March 2016 to 28 February 2017 and was 7.741% for the R208, and 9.763% for the R2048. The real-time composite yield quotes were used, and Bloomberg receives these from multiple contributors.

g – The growth rate is 0% as the SARB does not increase the dividends annually.

By inputting the variables above in Gordon's dividend model the calculation result is as follows:

P0 (minimum valuation) = R1.02

P0 (maximum valuation) = R1.29

If a shareholder were to buy SARB shares exclusively for the dividend yield, it would place the shares at a valuation between R1.02 and R1.29. A 2014 valuation calculated by Rossouw on a similar basis resulted in a valuation of R1.38 (2017:14). During 2017, the SARB shares traded at an average price of R4.55 (see Appendix table 4). The difference between the dividend yield valuation range (R1.02 - R1.29) and the average share price of R4.55 indicates that SARB shareholders do not have the dividend yield as their sole motive when buying the shares.

5.1.3 Liquidation or nationalisation distribution as profitability motive to invest in SARB shares

It is possible that shareholders buy shares with the motive of making a profit if the SARB shares is nationalised or if the SARB is liquidated. The SARB can only be placed under liquidation by an Act of Parliament and in such an unlikely event the reserve fund and surplus assets (if any) shall be divided in the ratio of 40% to the shareholders and 60% to the SA government (*South African Reserve Bank Act, No. 90 of 1989*, 1989:s38). The amount paid to the shareholders shall be limited to twice the average market price of the shares over the prior 12-month period (*South African Reserve Bank Act,*

No. 90 of 1989, 1989:s38(3)). The SARB Act currently makes no provision for the nationalisation of private shareholdings and the SARB Act will have to be amended should this be the case.

The SARB Amendment Act, passed in 2010, limited each shareholder to 10 000 shares and certain shareholders did not comply with that provision when the legislation was introduced. The SARB duly approached the High Court to enable the SARB forcibly to sell these shareholders' excess shares. The High Court directed the SARB to repurchase the excess shares which each shareholder (and their associates) held above the 10 000 share limit. The SARB was to repurchase the excess shares at a price of not less than R1.55 per share over a period of two years (*South African Reservebank vs Barit et al.*, 2016:2). The fair value price of R1.55 was determined by a KPMG valuation report and the valuation method was based on the SARB shares' dividend yield and compared to the dividend yields of irredeemable preference shares issued by commercial banks (KPMG, 2014). The average price which SARB shares traded at during the year ending 31 March 2010 was R11.05 (table 4). The average price at which the shares traded was not taken into account by the High Court when determining the expropriation compensation.

Mr Duerr was one such shareholder and held, together with associates, 90 000 shares (SARB, 2018b:5). Mr Duerr argued against the KPMG valuation of R1.55 per share by stating that "its assessment values the Reserve Bank at a mere R3.1 million" (Donnelly, 2017). The KPMG valuation determined only the private shareholding of the SARB at R3.1 million. The total SARB value which would include the private shareholding and government interest, would be significantly higher than the KPMG valuation. Mr Duerr also argued against the dividend yield valuation method KPMG used and stated that "the shares should be assessed on a net asset basis" (Donnelly, 2017). Mr Duerr believed that the shares traded far below their true value and he clearly had a profit motive when he bought the shares initially. Subsequent to the High Court order, the SARB sold his excess shares on the market at prices much less than net asset value per share, and at 30 November 2017 Mr Michael Duerr, together with associates, held only the allowable 10 000 shares (SARB, 2017a).

It is important to note that the KPMG valuation method, which the High Court affirmed, was based on the dividend yield of the shares and not on the net asset value of the SARB. This High Court ruling set a precedent concerning the valuation method which it views as "just and equitable" to expropriate property (in this case SARB shares) in the public interest as per sec 25(3) of the Constitution (*The Constitution of the Republic of South Africa, No. 108 of 1996, as amended,* 2012:s25(3)). A reasonable conclusion would be that should the SARB be nationalised, a similar valuation method based on the dividend yield will be used to expropriate property in the public interest. It is possible that disgruntled

shareholders will go to court, but the court will seek to use the precedent set in the 2016 Gauteng High Court Ruling.

The KPMG valuation report noted that in a liquidation scenario, parliament would not proceed with liquidation unless the risk of a reserve distribution to shareholders is mitigated (KPMG, 2014:220). This can be done by amending legislation to fix a share price in preparation for the coming liquidation or expropriation (KPMG, 2014:220). Historically, shareholder rights were reduced by Parliament when the SARB Amendment Act was passed, limiting each shareholder to a maximum of 10 000 shares (KPMG, 2014:220). Presumably, shareholder rights can easily be reduced again by fixing a share price for nationalisation.

It is possible that uninformed shareholders are still buying the shares expecting to sell them for their net asset value if the SARB is nationalised, but following the 2016 High Court ruling it is expected that most shareholders will know better.

5.2 Conclusion: Profit as a motive to invest in SARB shares

In the light of the preceding discussion one can conclude that:

i) shareholders do not invest in SARB shares in the hope of realising a capital gain,
ii) shareholders do not invest in SARB shares for a dividend return and
iii) shareholders do not invest in SARB shares in the hope of obtaining a liquidation or nationalisation distribution.

These findings are consistent with those of Rossouw who stated that, globally, only the central banks of Belgium and Greece can possibly be considered as an investment, as they are the only two central banks that do not have capped dividends (Rossouw, 2016:158).

This section will now proceed to investigate other motives for buying SARB shares in order to reveal any possible undisclosed rights and obligations of a SARB shareholding.

5.3 Other motives to buy SARB shares

In order to determine other motives for holding SARB shares, the 2017 Annual General Meeting (AGM) of the SARB was observed as part of this study. One share grants a shareholder access to the AGM, but 200 shares equate to one vote at the AGM (*South African Reserve Bank Act, No. 90 of 1989*, 1989, s23). Three shareholders were asked what their motivations were to buy the SARB shares. No formal interviews were conducted, and the conversations merely provided other motivations for shareholding. Their reasons were as follows:

1. The shares were inherited from the shareholder's father. The shareholder feels it is the shareholder's civic duty to attend the AGM.
2. The shares were bought to attend the annual general meetings with the hope of gaining access to a network of people and economic insights.
3. The shares were bought to bring to the SARB's attention certain cases which the shareholder feels the SARB needs to investigate.

Other motivations were also found. Thus, one journalist bought the shares due to "misguided patriotism – I could claim ownership of a little piece of my central bank" and to gain access to the AGMs where fewer journalists would be (Donnelly, 2017). Political analyst JP Landman bought his shares "[…] partly out of curiosity and partly to receive their publications, which are a masterclass in economics" (Donnelly, 2017).

Thus, these reported motivations to own SARB shares are diverse, but they do not reveal any significant undisclosed rights and obligations the shareholders have.

5.4 Observation of shareholder rights and obligations at the AGM

The AGM of the SARB was observed to determine whether the rights and obligations exercised by the shareholders at the AGM conformed with the rights and obligations mentioned in the Act. The following rights and obligations were exercised by the shareholders at the AGM:

- The previous year's minutes and the current year's annual report were received in soft copy prior to the meeting. The 2016 minutes were approved by the shareholders (*South African Reserve Bank Regulations, 2010*, 2010:s24.1(i)).
- Approval of the 2017/2018 financial statements of the SARB (*South African Reserve Bank Regulations, 2010*, 2010:s24.1(ii)).
- Approval of the audit remuneration of PWC Inc and SizweNtsalubaGobodo Inc. for completing the audit of the 2016/2017 financial year (*South African Reserve Bank Regulations, 2010*, 2010:s22(1)(b)).
- Appointment of the two audit firms PWC Inc. and SizweNtsalubaGobodo Inc. nominated by the directors, for the 2017/2018 audit (*South African Reserve Bank Regulations, 2010*, 2010:s22(1)(a)).
- The appointment of 3 of the 7 non-executive directors (*South African Reserve Bank Amendment Act, No. 4 of 2010*, 2010:s4(1)(b)). The 3-year term for these 3 non-executive directors came to an end and so the shareholders were called upon to vote for the candidates put forward by the Panel. Two candidates were put forward for each of the three positions.

- There was no special business for which proper notice was given (*South African Reserve Bank Regulations, 2010*, 2010:s7.3(d)). Also, there was no further business arising from the items discussed at the ordinary AGM (*South African Reserve Bank Amendment Act, No. 4 of 2010*, 2010:s7.3(e)).

These rights and obligations concur with the South African Reserve Bank Act and the South African Reserve Bank Regulations.

Towards the end of the AGM, after the business included in the agenda had been concluded and the SARB Governor had addressed the AGM, the CEO of Firstrand Bank Ltd, Mr Johan Burger addressed the AGM. Interestingly, the Governor knew beforehand that Mr Burger wanted to address the AGM, because the Governor stated that Mr Burger wished to address the AGM before Mr Burger had said anything; however, this item had not been placed on the formal agenda. Firstrand Bank Ltd held 10,000 shares at the date of the AGM.

> *"Thank you, Governor, thank you for the opportunity. On behalf of the banking sector we would like to express our sincere gratitude to the board, the Governor, the Deputy Governors and the staff of the Reserve Bank for the excellent work they have performed during a very difficult year. We recognise that the sustainability and success of the banking sector is very dependent on the enabling environment created by the central bank through its monetary policy and its supervision of the banking sector. We also recognise the positive impact that SARB plays on the global investor sentiment towards South Africa and also in the rating of South Africa. In fact, the respect that the foreign investors hold for this institution is noted in all meetings we as banks … attend in the ….. when we are on our roadshows talking to those people that want to invest in this country or provide funding for this country. It's also reflected in the level of support that South Africa's monetary policy framework provides to our sovereign rating. This support is much needed at a time when other economic institutional developments are putting downward pressure on the country's rating. We are also grateful for the ongoing efforts of SARB to communicate and protect the monetary policy framework, its integrity, its independence and the soundness of the banking sector. From a banking supervision perspective, we recognise your notable achievements and participation in international standard setting bodies such as the Financial Stability board, The Basel Committee on Banking Supervision, Financial Action Task Force has ensured that South Africa has complied with international standards which is critical for access to foreign capital and also to our correspondent banking relationship. Furthermore S&P recently stated that the strength of the banking sector is attributable to the strength of the supervisory monitoring of the Banking*

Supervision department. We want to wish you and your team well as we journey through this difficult economic environment and we as the banking sector are committed to do our positive contribution to the achievement of economic growth for the country as whole. Governor thank you again."

Any kind of address by a shareholder at the AGM is unusual, as the right to address the AGM is not listed in s7(3) as one of the items of business for the AGM (*South African Reserve Bank Regulations, 2010*, 2010, s7(3)) and it is not cited elsewhere in the *South African Reserve Bank Regulations, 2010*. All of the business listed in s7(3) of the Regulations had been concluded at the AGM before Mr Burger addressed the meeting. Indeed, the Governor had confirmed that all the business included in the AGM agenda had been concluded and after doing so, the Firstrand Bank Ltd CEO was afforded an opportunity to speak. The request was communicated prior to the AGM to the Governor, but it is unclear in terms of what section of the Act and Regulations the request was made and, procedurally, how such a request must be made by a shareholder.

In contrast to the treatment of Mr Burger, Mr A R Fondse who was present at the 2017 AGM, had requested that a list of financial irregularities be tabled as special business in terms of sec7.3(e) of the SARB Regulations. Moreover, Mr Fondse had previously requested that these items be tabled as special business at the 2016 AGM. The General Counsel of the SARB, Mr JJ de Jager, had discussed the list of items with Mr Fondse before the 2016 and 2017 AGMs and had requested him to explain how the items relate to the SARB Act and SARB Regulations. He failed to provide this explanation before the 2016 and 2017 AGMs and consequently the General Counsel ruled that "proper notice" was not given in terms of sec 7.3 of the Regulations. Mr Fondse was not afforded an opportunity to speak at the AGM and the Governor stated that:

"Those questions didn't qualify as special business and went beyond the limit of what the shareholders of the bank are supposed to deal with."

"If you are unhappy about what the General Counsel said, you are welcome to take it up with the bank. We are not going to deal with it in this meeting. You have raised policy issues, you have raised issues that are before the courts and this meeting has got no business discussing those things. I will take it after the explanation of the General Counsel, that the matters have been dispensed for the purposes of this meeting."

Mr Burger and Mr Fondse received very different treatment at the AGM; indeed, it seems that Mr Burger, the CEO of Firstrand Ltd., was given preferential treatment when compared to Mr Fondse. The Firstrand Ltd. CEO did not exercise a specific right in terms of the Act and the Regulations to address

the AGM, but was nevertheless afforded the opportunity. Mr Fondse needed to prove how his special business related to the SARB Act and SARB Regulations and because he failed to do so, he was not afforded an opportunity to speak.

5.5 Conclusion: shareholders rights and obligations

The analysis of shareholders' motives did not reveal any significant undisclosed shareholder rights and obligations. The shareholder rights and obligations were all legislated in the SARB Act and SARB Regulations.

It is now possible to answer, in full, the sub-question, "are the SARB shareholders the owners of the SARB and what are their rights and obligations?" It was determined in section 4 that the SARB shareholders are not the legal owners of the SARB, which answered the first part of the sub-question. In the case of the second part of the sub-question, the answer is that the SARB shareholders mainly exercised the rights and obligations afforded to them by the SARB Act and Regulations. In summary, the most important rights and obligations were exercised by them at the AGM as follows:

- The previous year's minutes and the current year's annual report were available prior to the meeting in soft copy and approved by the shareholders at the AGM. (*South African Reserve Bank Regulations, 2010*, 2010:s24.1(i)).
- Approval of the 2017/2018 financial statements of the SARB (*South African Reserve Bank Regulations, 2010*, 2010:s24.1(ii)).
- Approval of the remuneration of the auditors put forward by the directors (*South African Reserve Bank Regulations, 2010*, 2010:s22(1)(b)).
- Appointment of the audit firms nominated by the directors (*South African Reserve Bank Regulations, 2010*, 2010:s22(1)(a)).
- The appointment of non-executive directors put forward by the Panel (*South African Reserve Bank Amendment Act, No. 4 of 2010*, 2010:s4(1)(b)).
- The opportunity to place special business on the agenda (*South African Reserve Bank Regulations, 2010*, 2010:s7.3(d)), and the opportunity to discuss further business arising from the other items (the points above) discussed at the AGM (*South African Reserve Bank Amendment Act, No. 4 of 2010*, 2010:s7.3(e)).

It is important to note that the SARB shareholders have limited rights and obligations. The preceding review indicates that their most significant right is the right to appoint non-executive directors to the Board. Nevertheless, the extent of this right is severely reduced, because the SA Government, through the President (with help of the Minister and their appointed Panel members), can put forward their

candidates of choice. Consequently, the SA Government indirectly appoints the 7 non-executive directors. The shareholders can only choose between one of three candidates favoured by the SA Government. A previous SARB non-executive notes that the Panel selecting the candidates from the nominations is "authoritarian and undemocratic" and "enables the governor to cherry pick his or her own type of candidate" (Goodson, 2014:59). The rights and obligations of the SARB shareholders are severely limited and they are only there to approve certain decisions made by the directors.

The only undisclosed rights and obligations exercised by a commercial bank shareholder consisted of the address by the CEO of Firstrand Bank Ltd, which is in contrast to the treatment of the individual shareholder, Mr Fondse. There seems to be a working relationship between the SARB Board and the commercial banks. This will be further discussed in the following section, Section 6. That section will also answer the main question: "what is the effect of nationalising the private shareholding of the SARB?"

6. Conclusion on the effect of nationalising the private shareholding of the SARB

The two elements of the sub-question were answered in section 5, and so the main question can now be answered in this section 6. The effect of nationalising the private shareholding of the SARB can be accurately predicted, because has now been determined that the shareholders are not the legal owners of the SARB and a complete list of the SARB shareholder rights and obligations has been determined. The effect of nationalising the private shareholding of the SARB is discussed, below, under the headings being the operational, financial and corporate governance impact on the SARB.

Financial impact on the SARB

The annual dividend payments will be reduced from R200 000 to nil. This represents only 0.014% of the total comprehensive income for SARB in 2017. The dividend amount paid was therefore virtually immaterial for the 2017 financial year and the amount was not even reflected in the "Group statement of changes in Equity."

The R2 000 000 share capital reflected on the SARB balance sheet will also be bought back. As explained in section 4, the expropriation payment will probably be based on the dividend earning potential of the share. On p33 the range of the share price based on the dividend earning potential was found to be R1.02 to R1.29 and calculating the expropriation payment on the top end of this range results in a payment of R2 700 000 (+-R1.29 x 2 000 000 = R2, 580 000). This payment is virtually

immaterial when compared to the 2017 balance of "Total liabilities, capital and reserves;" it represents 0.00036% of the total.

Furthermore, the expropriation payment will probably be funded by the SA Government. For the SARB the financial impact of nationalising the private shareholding of the SARB will be insignificant.

Impact on the trading of SARB shares

The trading of SARB shares is operated by the Over The Counter Share Transfer Facility Office (OTCSTF Office) and is under the authority of the Transfer Manager of the SARB (SARB, 2018c:par1.2.2.21). The OTCSTF office will become redundant as there will no longer be any shares to be transferred.

There will be no significant impact on the SARB's operations.

Corporate governance impact on the SARB

At the closing address of the 2017 AGM the Governor referred to the SARB private shareholding and stated:

> *"Private shareholders represent an additional layer in the governance framework, to strengthen accountability and transparency and compliment the mechanism of how we are accountable to South Africans through their publicly elected representatives in parliament."*

The SARB Governor thus states that the rights and obligations, exercised by shareholders, act as an additional governance measure. This paper argues that the additional layer of governance is very thin. The shareholder rights and obligations performed at the AGM are, in terms of corporate governance, of little practical value:

- The appointment of auditors and approval of their audit remuneration can be performed by the SARB board of Directors or a subcommittee. The board of Directors act free from any conflicts of interest and must disclose any interest in SARB contracts (*South African Reserve Bank Regulations, 2010*, 2010:s15). The directors are independent in terms of their dealings with external parties. The independent audit committee of a public company nominates the auditor and approves their remuneration (*Companies Amendment Act, No. 3 of 2011*, 2011:s94(7)). Similarly, the SARB board of Directors are in a suitable position to nominate the auditors and approve their remuneration.
- The 7 non-executive directors appointed by the shareholders are nominated by the Panel and therefore the Panel controls their appointment. The panel consists of the Governor, a retired judge and another (both appointed by the Minister) and three persons nominated by National

Economic Development and Labour Council ("Nedlac"). The President selects the Governor while Nedlac is also a government council. The shareholder appointments have limited impact because the nominations are already controlled by the SA government through the Panel. In a nationalisation scenario, appointments can be made by the Panel.

- During the 2017 AGM, a shareholder, Mr A R Fondse, asked to table a list of financial irregularities as special business in terms of sec7.3(e) of the SARB Regulations. As discussed previously, that request was denied on the basis that Mr Fondse failed to provide an explanation how the list relates to the SARB Act and Regulations. Consequently the General Counsel ruled that "proper notice" was not given in terms of sec 7.3 of the Regulations. The shareholder's list consisted of external cases of financial irregularities which, according to Mr Fondse, required SARB investigation and action. In terms of external cases, shareholders cannot play an activist role and special business must relate to their limited, internal powers provided by the SARB Act and SARB Regulations.
- During the 2017 AGM, the Governor noted that a letter was received from a shareholder, Mr. S.M. Goodson, who suggested that the 1935 Chicago Plan of Irving Fisher should be implemented. The plan advocated that the state should create the country's money supply and that private banks should operate as full reserve banks (Fisher, 1935:8). Fisher noted that this would generate full employment, business cycles would no longer occur and inflation would be reduced and remain at zero. The Governor stated that the topic is contentious and the plan in its modern form has numerous critiques. The Governor stated that one criticism of the plan is that it would cause substantial amounts of economic disruption; also, to eliminate fractional reserve banking would not be beneficial for price stability or financial stability. The Governor noted that there would be still some kind of money creation and the rate of inflation would be linked to this rule, as it is currently under fractional reserve banking. Concluding, the Governor stated that the bank is always open to discuss economic innovations and macro-economic policy, but the board does not believe that the AGM is the appropriate forum to discuss this.
- The approval of the previous year minutes and financial statements by the shareholders does give some corporate governance assurance, but the task can also be performed by the SARB board of Directors without dire consequences.

The shareholder rights and obligations, described above, are of little governance value. Rossouw observed that the shareholding structure of the SARB contributes to improved governance, because AGMs are held where the shareholders can call management to account (2016:158). However,

observations at the 2017 AGM gave the perception that the directors manage the bank as they see fit and the shareholders are mere bystanders of management decisions. When the shareholders wanted to discuss macro-economic policy or financial sector irregularities they were not afforded the opportunity. Furthermore, the limited governance rights and obligations are used to only a limited extent by the shareholders. For example, only 19 shareholders who were eligible to vote, attended the 2017 AGM. Those 19 shareholders held, at 30 November 2017, only 2.93% of the total shareholding (see table 5) (SARB, 2017a). The secretary of the SARB stated at the 2017 AGM that another 11 shareholders were represented in proxy and the total number of votes exercisable by all the shareholders present and in proxy was 574 votes, translating into 5.74% of a possible 10,000 votes. This supports the view that the corporate governance function of the shareholders exists only in theory and is of no practical value. The shareholder rights and obligations can be performed by the board of directors, without compromising the strength of the SARB's corporate governance.

Conclusion and final remarks

The literature review, presented in section 2, began by evaluating literature about the ownership structure of the SARB and how the bank compares to other central banks. It became clear from the literature studied that the ownership structures of central banks are very different and furthermore, no other central bank has the same legal system as the SARB. Therefore, the thesis applied another method to answer the main question and this method entailed answering a sub-question with two elements: "are the SARB shareholders the owners of the SARB and what are their current rights and obligations?" The literature review, presented in section 2, also evaluated literature claiming that shareholders are the owners of their corporations, as well as evidence to the contrary. No conclusive evidence was found to settle the argument of whether shareholders are indeed the owners of corporations. However, the strongest and most recent arguments were made from a legal perspective and therefore a legal measurement was used to examine corporate ownership. The literature survey concluded that the legal measure which should be used to determine whether the SARB shareholders are the owners, is the A.M. Honoré incidents of ownership measure. The legal measurement could have included other incidents of ownership and by only using the A.M. Honoré incidents the scope of this thesis was limited to some extent.

The A.M. Honoré incidents of ownership measure was used to determine whether the shareholders of a JSE-listed company (section 3) and the shareholders of the SARB (section 4), are the owners of the corporations, based on the legal principles. As expected, the shareholders of a JSE-listed corporation satisfied more of the legal characteristics of ownership than SARB shareholders. Indeed, it was found that the SARB shareholders are not the owners of the SARB on a legal basis as they satisfy none of the legal characteristics of ownership. The government is the more probable owner of the SARB, based on the Honoré incidents of ownership measure.

Section 4 described the obvious rights and obligations of the SARB shareholders, while section 5 continued by seeking undisclosed rights and obligations; this was done by asking SARB shareholders about their motivations for holding SARB shares, and by attending and observing the 2017 AGM of the SARB. Based on these findings and observations, it was argued that profit is not a motive to own SARB shares and this finding agreed with other literature (Rossouw, 2016:158). The motivations for buying SARB shares were found to vary greatly, as described in Section 5, but no undisclosed rights and obligations were revealed hereby. The AGM of the SARB was observed to determine if the rights and obligations exercised by the shareholders conformed to the rights and obligations mentioned in the Act. The only undisclosed rights and obligations exercised by a shareholder was the address by the

CEO of Firstrand Bank Ltd. Thus, the CEO was allowed to address the meeting and this was is in contrast to the treatment of an individual shareholder, Mr Fondse, who was not allowed to do so.

The sub-question was answered by concluding that the SARB shareholders are not the legal owners of the SARB (section 4), and a complete list of their rights and obligations was determined (section 5). These findings allowed the main question to be answered as follows: thus, the financial, operational and corporate governance impact of nationalising the SARB private shareholding would be insignificant. Rossouw found that there is no evidence that central banks with shareholders outperform, in any way, central banks without shareholders (Rossouw, 2016:158). Rossouw's finding confirms the conclusion in section 6 that the impact, on the SARB, of nationalising its private shareholding, would be insignificant.

An important assumption made in this analysis is that there will be no alternation in the current measure of SARB autonomy or the SARB mandate. Although the SARB board and Monetary Policy Committee (MPC) are directly and indirectly appointed by the SA Government, they perform their duties with a considerable degree of autonomy. Since 25 February 2009, the inflation target range has been set at a range between 3% and 6% for a year-on-year increase in headline Consumer Price Index (CPI for all urban areas) (SARB, 2009). The CPI data is released to the public by Statistics South Africa and this creates a transparent and objective environment to monitor the decisions of the MPC. A relaxation by the MPC to keep headline CPI within the 3-6% target range, will cause the markets to doubt the committee's autonomy and commitment to the mandate. Such an action would probably lead to an outflow of capital from the country, a reduction in the strength of the currency and an increase in the country's borrowing cost. A statement issued by the newly-elected ANC National Executive Committee on 13 January 2018 noted, "The ANC once more affirms the role, mandate and independence of the Reserve Bank. As mandated by Conference, we call on government to develop proposals, in line with international practice, to ensure full public ownership of the Bank." (African National Congress, 2018b). It seems probable that, in the foreseeable future, the SARB mandate and MPC autonomy will remain unchanged if the SARB private shareholding is nationalised.

The following question arises: why would various parties request the nationalisation of the SARB private shareholding if, functionally, there will be no significant change? The complete answer to this question falls outside the scope of this paper, but a possible answer is briefly discussed, below.

Thus, there seems to be a working relationship between the SARB and commercial banks, as suggested by the following:

- The Public Protector suggested the SARB mandate should be changed to make "balanced and sustainable economic growth" the primary objective. The Public Protector made these comments when she was delivering her findings on "an apartheid-era bailout of Barclays Africa Group" in which she claimed that "the bank (ABSA) had unduly benefited from apartheid-era bailouts (from the SARB) and must repay R1.1 billion" (Pather, 2017).
- The comments made by the CEO of Firstrand Bank Ltd where he thanked and congratulated the SARB board at the 2017 AGM on the work they perform: these provide proof of a co-dependency between the commercial banks and the SARB. As reported above, the CEO stated at the AGM that "the sustainability and success of the banking sector is very dependent on the enabling environment created by the central bank through its monetary policy."
- The CEO of Firstrand Bank Ltd was given an opportunity to speak at the AGM, even though his address was not in terms of sec7(3) of the Act, which deals with the business of the AGM (*South African Reserve Bank Regulations, 2010*, 2010:s7(3)). Also, the sec7(3) business had already been concluded at that stage of the AGM. The Governor had received the request from the CEO of Firstrand Bank Ltd and it was agreed upon before the AGM, but not placed on the formal agenda. This permission to address the meeting was in contrast to the treatment of an individual shareholder (Mr Fondse) who was not afforded the opportunity to speak. Mr Fondse had to prove that his request qualifies as special business in terms of sec7.3 (d), and relates to the SARB Act and Regulations. However, sec7.3 (d) of the Regulations do not have a requirement that special business must relate to the SARB Act and Regulations.
- The letter from Mr S.M. Goodson did not receive much attention at the AGM. Mr Goodson was a non-executive director of the SARB from 2003 until 2012 (Goodson, 2014:51,66). He is critical of the fractional reserve banking system and the ability of commercial banks to create money (Goodson, 2014:113). He writes that the historical origin of central banks stemmed from the desire of private banks to control the process of money creation and that central banks pretend to have the monopoly to create money, but in reality most of the money in circulation is created by private banks (Goodson, 2014:113). Central banks only create the coins and bank notes in currency (Goodson, 2014:131).
- The SARB was created in 1921 by Parliament at the request of commercial banks, to relieve them of certain duties which were causing the banks to make losses. Thus, between 1914 and 1918, commercial banks in South Africa were making losses because of arbitrage opportunities between the price of gold in the UK and South Africa. Currency holders in South Africa had the right to exchange currency for gold at any South African Bank. The Banks had to buy the gold in the UK to sell in South Africa and this created a situation where the banks

were trading at a loss; therefore, they requested the South African Government to release them from the obligation to convert banknotes into gold. A committee of Parliament was established and it recommended the establishment of a central bank to assume responsibility for issuing banknotes and for backing the currency with gold. Parliament accepted the recommendations of the committee and promulgated the *Currency and Banking Act in 1920, Act No. 31 of 1920,* which provided for the establishment of a central bank. The Reserve Bank was established on 30 June 1921 (SARB, 2017d). This background gives the impression that the SARB was created in the interest of the South African commercial banks.

It is clear from the above review that the SARB and commercial banks have a working relationship. This enables the commercial banks to create most of the nation's money (98%) through the credit they issue to earn interest (van Wyk, Botha & Goodspeed, 2006:28). It has been confirmed by the Bank of England that when a bank makes a loan, new money is created (McLeay, Radia & Thomas, 2014:14). In many instances the requests to nationalise the private shareholding of the SARB coincided with requests to nationalise commercial banks, create a state bank or to give parliament the sole power to create money:

- Professor Christopher Malikane stated that the tasks of progressive forces should be, amongst other things, to nationalise commercial banks as well as the SARB (Malikane, 2017).
- The EFF have proposed a draft bill to nationalise the SARB, but they will also propose a bill to create a state bank in the future (Maqhina, 2018).
- Mr S.M. Goodson has proposed, in his book, a bill in which the commercial banks have a 100% reserve requirement and parliament will have the sole power to create the nation's money supply in any form (Goodson, 2014:135).

This thesis hypotheses that the actual motive behind the requests for nationalising the private shareholding of the SARB, is the need to nationalise the ability to create the nation's money supply. It is true that the commercial banks cannot create unlimited amounts of money and whatever money they do create is driven by a demand for credit (van Wyk, Botha & Goodspeed, 2006:23). Commercial banks can only create money within the limits of the regulatory framework (e.g. the National Credit Act and Basel Regulations) and monetary policy rates set by the central banks (McLeay, Radia & Thomas, 2014:17). These limits are still very lenient and in the U.K., for example, banks are only required to keep reserves of 25 to 1 (Wolf, 2017). In recent years the concept of the government creating the money supply has gained more popularity after Benes and Kumhof published an IMF working paper about the 1935 Irving Fisher Chicago Plan. The Chicago plan proposed the separation of monetary functions (money creating) and credit functions of the banking system, by requiring

commercial banks to have a 100% reserve backing for deposits (Fisher, 1935:8-9). Benes and Kumhof researched the Chicago plan and found that their simulations fully validated Fisher's claims and even went beyond the benefits claimed by Fisher (Benes & Kumhof, 2012:55):

- The Chicago plan could reduce business cycle fluctuations significantly, because there would be a reduction in the sudden increases and contractions of bank credit and of the supply of bank-created money.
- A complete elimination of bank runs.
- There would be a dramatic reduction of the (net) government debt.
- Likewise, dramatic reduction of private debt, as money creation no longer requires simultaneous debt creation.
- There would be the removal of multiple distortions which are costly to monitor, including interest rate risk spreads, distortionary taxes and macro-economic credit risks.

The Chicago plan would give the opportunity to bring state inflation down to zero in an environment where liquidity traps do not exist.

There is a case to be made for central banks rather than commercial banks, to create the money supply and determine its allocation (Wolf, 2017). Commercial banks would still have a role to play by concentrating on their strength to extend credit to investment projects that require monitoring and risk management expertise (Benes & Kumhof, 2012:55). This paper could be expanded to research the effect of the SARB nationalising the ability of commercial banks to supply money.

7. Reference list

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8. Appendix

Table 4: SARB Historic share date-Summary of data received from the SARB Legal Services Department (The data in this table was obtained from the SARB Legal Services Department and is not available from other public sources.)

	Year ended 31 March 2007	Year ended 31 March 2008	Year ended 31 March 2009	Year ended 31 March 2010	Year ended 31 March 2011	Year ended 31 March 2012
No. of transactions concluded:	24	42	40	69	49	25
No. of shares traded over period:	94 700	69 516	57 980	128 139	75 313	21 275
Total purchase price paid over period:	R 151 896.00	R 237 860.80	R 596 430.00	R1 416 347.50	R 923 383.10	R 241 757.50
Minimum share price:	R 1.26	R 2.60	R 6.00	R 1.00	R 10.00	R 5.00
Maximum share price:	R 2.77	R 11.00	R 20.00	R 14.00	R 13.00	R 13.00
Average price per share traded:	R 1.60	R 3.42	R 10.29	R 11.05	R 12.26	R 11.36
Average number of shares per deal:	3 946	1 655	1 450	1 857	1 537	851
Percentage of issued shares traded:	4.74%	3.48%	2.90%	6.41%	3.77%	1.06%
	Year ended 31 March 2013	Year ended 31 March 2014	Year ended 31 March 2015	Year ended 31 March 2016	Year ended 31 March 2017	
No. of transactions concluded:	15	19	47	39	21	
No. of shares traded over period:	38 950	52 579	118 841	74 135	35 774	
Total purchase price paid over period:	R 216 975.00	R 293 863.00	R 343 713.52	R 136 433.80	R 162 628.00	
Minimum share price:	R 1.00	R 1.00	R 1.00	R 1.40	R 1.50	
Maximum share price:	R 11.00	R 10.50	R 10.50	R 3.00	R 10.00	
Average price per share traded:	R 5.57	R 5.59	R 2.89	R 1.84	R 4.55	
Average number of shares per deal:	2 597	2 767	2 529	1 901	1 704	
Percentage of issued shares traded:	1.95%	2.63%	5.94%	3.71%	1.79%	

Table 5 - Shareholders eligible to vote in attendance at the SARB Ordinary General Meeting on 28 July 2017 (Data about the SARB AGM held were obtained from the SARB Legal Services Department. Data pertaining to the number of shares were obtained from the SARB website listing the shareholders as at 30 November 2017.)

	Shareholders eligible to vote	**Shares**
1	Mr M C Hathhorn	10 000
2	Mr A R Fondse	200
3	Mr J N L Fourie	200
4	Mr M B Pretorius	9 800
5	Miss T K Mahlangu represented by her father Mr L Mahlangu	2 500
6	ABSA Bank Ltd	10 000
7	Ms H Brand	200
8	Mr C J van der Walt	200
9	Dr C L Stals	200
10	Firstrand Bank Ltd	10 000
11	Mr D M Lawrence	1 000
12	Mr H Anderson	200
13	Bidvest Bank Ltd	500
14	Mr C J Hugo	1 000
15	Mr M F Brown	200
16	Mr P J du Pont	300
17	Mr F B Hlekani	1 000
18	Mr J Gable	10 000
19	Mr Z A Parker	1 000
		58 500

One share grants a shareholder access to the AGM, but 200 shares equate to one vote at the AGM (*South African Reserve Bank Act, No. 90 of 1989*, 1989, s23). These shareholders held 200 or more shares and were present in person.